

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN WORRALL,)
)
Petitioner,)
)
vs.) Case No. 4:09 CV 2079 RWS
)
DAVE DORMIRE,)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before me on the petition for writ of habeas corpus filed by petitioner John Worrall. I referred this matter to United States Magistrate Judge David D. Noce for a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b). On September 17, 2012, Judge Noce filed his recommendation that petitioner's habeas petition should be denied.

Petitioner objects to Judge Noce's Report and Recommendation, and I have conducted a de novo review of all matters in the file relevant to the objections.

With respect to Ground 1, petitioner argues that Judge Noce should have ruled on his battered spouse defense de novo. That is not the standard. Judge Noce correctly applied the governing law to the facts of petitioner's case and correctly concluded that the Missouri courts' evidentiary ruling to exclude petitioner's battered spouse defense was not contrary to clearly established federal

law. Therefore, Judge Noce correctly decided that petitioner was not entitled to habeas relief on Ground 1 of his petition.

Petitioner next argues that Judge Noce incorrectly decided his ineffective assistance of counsel claims raised in Grounds 2 and 3 of his petition. In his objections, petitioner restates the arguments he made in support of his habeas petition. Having reviewed the file, I agree with Judge Noce's Report and Recommendation that counsel was not ineffective for failing to include a defense-of-premises instruction, in his cross-examination of witness Yvonne Goodrich, and in his introduction of evidence of the violent nature of the relationship between petitioner and the victim. Judge Noce correctly applied the governing law to the facts of petitioner's case and correctly concluded that petitioner is not entitled to habeas relief. Petitioner admits that Judge Noce's conclusion that Ground 4 is procedurally defaulted is correct. Because I agree with Judge Noce's analysis, I am overruling petitioner's objections and adopting Judge Noce's Report and Recommendation on all grounds of the petition.

I have also considered whether to issue a certificate of appealability. To grant a certificate of appealability, the Court must find a substantial showing of the denial of a federal constitutional right. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are

debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997) (citing Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994)).

Petitioner has not made such a showing. Therefore, I will not issue a certificate of appealability. Finally, petitioner has filed a motion for counsel. I will deny the motion as moot because the habeas petition and a certificate of appealability are being denied.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation filed on September 17, 2012 [#19] is adopted and sustained in its entirety.

IT IS FURTHER ORDERED that petitioner's objections to the Report and Recommendation [#22] are denied.

IT IS FURTHER ORDERED that Petitioner John Worrall's Petition for Writ of Habeas Corpus [#31] is **DENIED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability, and petitioner's motion for certificate of appealability [#23] is denied.

IT IS FURTHER ORDERED that petitioner's motion to appoint counsel [#24] is denied as moot.

IT IS FURTHER ORDERED that petitioner's motion for leave to proceed ifp [#25] is denied as moot as petitioner has previously been granted leave to proceed ifp.

A separate judgment in accordance with this Memorandum and Order is entered this same date.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of October, 2012.